



April 17, 2000

Mr. David R. Hurley
Assistant County Attorney
County of Fort Bend
301 Jackson, Suite 621
Richmond, Texas 77469-3108

OR2000-1519

Dear Mr. Hurley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135881.

Fort Bend County received a request for the tape of a 9-1-1- call reporting a medical emergency and any emergency medical services ("EMS") report concerning the incident. You seek to withhold portions of the responsive information under section 552.101 of the Government Code.

Section 552.101 requires withholding information made confidential by statute. Access to certain EMS records is governed by the provisions of section 773.091 of the Health and Safety Code. Open Records Decision No. 598 (1991). Section 773.091 of the Health and Safety Code (the Emergency Medical Services Act) provides in part:

(A) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

....

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

In our opinion, the submitted EMS report must generally be withheld under section 773.091(b) *See* Open Records Decision No. 598 (1991). However, information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of the patient is not confidential. Similarly, the submitted 9-1-1 tape must be withheld under section 773.091(a) if the EMS dispatcher on the tape was certified EMS personnel.

If the dispatcher on the submitted 9-1-1 tape was not certified EMS personnel, then in our opinion, the tape must, in any case, be withheld under common law privacy. Section 552.101 also protects information made confidential by judicial decision including information coming within the common law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. *See also* Open Records Decisions Nos. 455, 470 (1987) (certain medical conditions implicate common law privacy).¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

¹You also claim the protection of section 772.318 of the Health and Safety Code for identifying information on the tape. Section 772.318 makes caller telephone numbers and addresses furnished by computerized 9-1-1 service suppliers or business service users confidential. *See* Open Records Decision No. 649 (1996). We note, however, that it does not appear that the information on the tape for which you seek protection was furnished by a computerized service supplier or business service user such that the information in question would be subject to section 772.318.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 135881

Encl. Submitted documents

cc: Mr. Eric Hanson
Houston Chronicle
1511 Nails Creek
Sugar Land, Texas 77478
(w/o enclosures)